84-1198

No.

Office-Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

GAF CORPORATION,

Petitioner,

vs.

JAMES K. J. CHENG,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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January, 1985

QUESTION PRESENTED

Whether the Court of Appeals for the Second Circuit erred in holding that an entire multi-city, multi-department law firm should be disqualified prior to trial from defending a client in an action[1] because one of its attorneys previously worked for a legal services organization which represents the plaintiff in that action, where the law firm began defending the action substantially prior to hiring the attorney, where that attorney had no direct involvement with the action or the plaintiff while at the legal services organization, where the attorney has been completely screened away from any involvement in the action while at the law firm and assigned to a department of the firm wholly removed and distinct from the department in charge of defending the action, where the attorney has revealed no alleged confidences and his integrity has been deemed above suspicion, and where the District Court twice had found that continued representation of defendant would not in fact be prejudicial to plaintiff and declined to disqualify the law firm, but where the District Court ultimately reversed itself only under judicial duress caused by prior Second Circuit *dicta* in the action after years of proceedings that did not produce any evidence of prejudice.

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[1] The caption of the case in this Court contains the names of all parties to the proceeding in the Court of Appeals for the Second Circuit.

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IN THE

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OCTOBER TERM, 1984

GAF CORPORATION,

Petitioner,

VS.

JAMES K. J. CHENG,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner GAF Corporation ("GAF")[2] prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit entered in this case on October 25, 1984.

OPINIONS BELOW

The opinion of the Court of Appeals for the Second Circuit is reported at 747 F.2d 97 (2d Cir. 1984) and is set forth at Appendix A herein. The opinion of the District Court for the Southern District of New York, dated February 13, 1984, is not reported and is set forth at Appendix B herein.

[2] GAF has no parent companies, subsidiaries (except wholly owned subsidiaries) or affiliates.

JURISDICTION

The judgment of the Court of Appeals for the Second Circuit was entered on October 25, 1984. This petition for a writ of certiorari was filed within ninety (90) days of the entry of judgment. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CODE OF PROFESSIONAL RESPONSIBILITY PROVISIONS INVOLVED

Canon 4 of the Code of Professional Responsibility ("Code") states: "A Lawyer Should Preserve the Confidences and Secrets of a Client."

Canon 5 of the Code states: "A Lawyer Should Exercise Independent Professional Judgment on Behalf of a Client."

Canon 9 of the Code states: "A Lawyer Should Avoid Even the Appearance of Professional Impropriety."

Disciplinary Rule 5-105(D) of the Code states: "If a lawyer is required to decline employment or withdraw from employment under a Disciplinary Rule, no partner, or associate, or any other lawyer affiliated with him or his firm, may accept or continue such employment."

STATEMENT OF THE CASE

From October 1974 until October 1979, Philip M. Gassel ("Gassel") was employed as a staff attorney by Legal Services for the Elderly Poor[3] ("LSEP"). LSEP was at all relevant times a state and federally funded legal services organization specializing in legal problems of the elderly. During the period of Gassel's employment, LSEP employed from four to six attorneys, assisted by several part-time law students.

On June 29, 1977, James K.J. Cheng ("Cheng"), respondent herein, commenced this action, invoking federal jurisdiction under 28 U.S.C. §§ 1331, 1337 and 1343, and alleged that GAF violated the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 *et. seq.*, and the Civil Rights Act of 1866, 42 U.S.C. § 1981. Cheng was represented by Jonathan A. Weiss, Director

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[3] The name of the entity was changed to Legal Services for the Elderly after Gassel's departure.

of LSEP. While at LSEP, as Cheng's counsel has contended herein, Gassel was present at certain "informal" staff discussions with various attorneys regarding, among other things, the general course and status of any number of LSEP cases of which Cheng's case was one, and may have been exposed more than five years ago to unspecified confidential information. However, as conceded by Cheng's counsel, at no time did Gassel represent Cheng in any capacity. He undertook no research, neither reviewed nor prepared pleadings, motion papers, memoranda or correspondence of any kind, nor did Gassel ever confer with Cheng with regard to the prosecution of this case.

The firm of Epstein Becker Borsody & Green (the "Epstein Firm") hired Gassel as an associate in October 1979 for its health law department because of his expertise in that substantive area. At that time, this action had been pending over two years and was being defended by the Epstein Firm's labor law department. The defense of the case was originally undertaken by Ronald Michael Green, then a member of another law firm, who, upon joining the Epstein Firm in August 1978, continued supervising GAF's defense as head of the Epstein Firm's labor law department. This case, as it is an employment discrimination matter, was initially assigned to the Epstein Firm's labor law department, which has handled it exclusively to this date with no assistance from any of its other departments. When Gassel was first employed, the Epstein Firm had some thirty-five attorneys, with New York City and Washington, D.C. offices.[4] At all relevant times, the Epstein Firm has had only three major areas of specialization, labor law, health law and government procurement law. Attorneys are permanently assigned to one of these areas of specialization on a full-time and exclusive basis due to the high degree of substantive expertise necessary to adequately represent clients in those areas. Staff meetings are held separately for each specialty. Gassel was assigned to

[4] The Epstein Firm has since grown to well over one hundred attorneys, and added offices in Forth Worth, San Francisco, Los Angeles, Tallahassee, and Alexandria. It has been ranked as one of the 250 largest law firms in the country.

the health law department at the commencement of his employment with the Epstein Firm and has remained continuously with that department.

Since the inception of Gassel's employment, the Epstein Firm has maintained a "Chinese Wall" between him and this case, which has never been breached. Gassel has had no involvement with this case whatsoever, other than filing factual affidavits with the District Court solely with regard to Cheng's disqualification motions, and has not been privy to any discussions regarding the merits, defenses, tactics or strategies of the case. He has never been permitted to work on the case or view the files. Attorneys in the Epstein Firm may not discuss the case with Gassel or in his presence. Gassel has divulged no confidential information to the Epstein Firm, has never been requested to do so, nor would he do so. Cheng and his counsel have considered Gassel's integrity above suspicion.[5]

On January 25, 1980, Cheng moved to disqualify the entire Epstein Firm on the grounds that its continued participation in the action violated the Code of Professional Responsibility. On March 14, 1980, the District Court for the Southern District of New York denied the motion, concluding after extensive factual submissions and argument that under the circumstances presented, disqualification "would not serve any interest which the law recognizes." At the time the motion was decided, substantial discovery over a period of approximately two years, including numerous depositions, interrogatories and document requests, as well as extensive legal research and other pre-trial preparation, had been completed and GAF had already incurred the attendant and considerable legal expenses. Cheng appealed the order denying disqualification.

On August 26, 1980, the Court of Appeals for the Second Circuit reversed the decision of the District Court, finding that, despite the Epstein Firm's substantial and uncontroverted screening procedures, it was "unclear to us how disclosures, admittedly inadvertent, can be prevented throughout the course

[5] Gassel became a member of the Epstein Firm on July 1, 1984. He will not be permitted to share in any revenues generated by this action.

of this representation." *Cheng v. GAF Corp.*, 631 F.2d 1052, 1058 (2d Cir. 1980). The case was remanded to the District Court for entry of an order of disqualification. GAF, after unsuccessfully petitioning for rehearing, then filed a petition for a writ of certiorari with this Court.

By order dated February 23, 1981, the Court granted certiorari and summarily vacated the judgment of the Court of Appeals for the Second Circuit with instructions that Cheng's appeal be dismissed (for want of jurisdiction) pursuant to *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368 (1981), on the ground that an interlocutory appeal of the order denying disqualification was not available. *GAF Corp. v. Cheng*, 450 U.S. 903 (1981). Thereafter, Cheng moved before the Second Circuit to have his appeal deemed a petition for a writ of mandamus. The motion was denied.

On May 12, 1981, Cheng moved to renew his original disqualification motion although there were absolutely no new supporting facts presented to the District Court. The court denied the motion on July 1, 1981 without prejudice to its later renewal should it appear that "permitting continuing representation was [in fact] prejudicial" to Cheng. Then Cheng petitioned the Second Circuit for a writ of mandamus, which was denied. Thereafter, Cheng filed a petition for a writ of certiorari with this Court. That petition was denied on January 18, 1982. *Cheng v. GAF Corp.*, 455 U.S. 909 (1982).

Arguing that Cheng's disqualification efforts subsequent to his first such motion were unreasonable and vexatious, GAF moved in the District Court to recover attorneys' fees and costs under 28 U.S.C. § 1927. The motion was granted to the extent that GAF was awarded $1,000 in expenses. *Cheng v. GAF Corp.*, 566 F. Supp. 350 (S.D.N.Y. 1982). Cheng appealed to the Second Circuit, which reversed, finding it "puzzling" that the District Court did not grant the second disqualification motion. *Cheng v. GAF Corp.*, 713 F.2d 886, 891 (2d Cir. 1983).

On September 2, 1983, armed with the Second Circuit's "message" to the District Court, Cheng moved for the third time

to disqualify the Epstein Firm. This time the District Court granted the motion, stating in its brief February 13, 1984 opinion:

> While aware that the Court of Appeals denied the mandamus plaintiff sought following the denial of the prior motion; and aware of the instruction of *Firestone v. Risjord*, 449 U.S. 368 cited by the Supreme Court on the first certiorari herein, at 377: "The propriety of the District Court's denial of a disqualification motion will often be difficult to assess until after its impact on the underlying litigation may be evaluated, which is normally after final judgment..."; and aware of today's great and increasing amount of lateral transfers of lawyers among firms (*see, e.g.*, *"The Rush to Lateral Hires,"* The National Law Journal, October 31, 1983); and while aware of plaintiff's counsel's concession on the record on the argument of the motion that he knows of no actual prejudice from Mr. Gassel's transfer, and that his claim is that, "The actual injury was created by the transfer[,]" the motion is nevertheless granted, *see*, 713 F.2d 886 (1983). This action should proceed to its conclusion unburdened of this overhanging issue.

A-5.[6]

GAF appealed the District Court decision. By decision dated October 25, 1984, the Second Circuit affirmed, finding no abuse of discretion. (A-1). To date, some five years have been consumed by Cheng's disqualification efforts, and the Epstein Firm has incurred substantial nonrecoverable expenses.

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[6] Refers to page number of Appendix.

REASONS FOR GRANTING THE WRIT

I.

This Case Presents Issues of Importance to the Entire Legal Profession.

All lawyers function in a system filled with ethical constraints, many of which are hard to apply and capable of generating significant debate. The courts are frequently placed in the difficult position of having to interpret these ethical constraints. The resulting rulings affect both attorneys and their clients. The issues presented in this case have particularly far-reaching impact on the mobility of attorneys, especially those who wish to devote, or who have devoted, any portion of their time or careers to the public interest, and the ability of litigants to freely choose their counsel.

The question of whether a law firm must be disqualified from a case in which it has a substantial and long-standing commitment because of the necessity for disqualification of a former legal services attorney now employed by the firm, who has been effectively screened from the case, is closely akin to the same question involving a government attorney. The former government attorney issue has attracted a great deal of attention. In *Armstrong v. McAlpin*, 625 F.2d 433 (2d Cir. 1980) (*en banc*), *vacated on jurisdictional grounds*, 449 U.S. 1106 (1981), the Court of Appeals for the Second Circuit addressed the issue of screening procedures as a method of avoiding law firm disqualification. On the rehearing *en banc* of the Second Circuit's earlier panel decision, 606 F.2d 28 (2d Cir. 1979), the court received seven *amici curiae* briefs, all attesting to the importance of the issues raised on appeal, and stated that a decision rejecting the efficacy of screening "may have significant adverse consequences." 625 F.2d at 443. These consequences, in the words of the court, could take the following forms:

> Thus, such disapproval may hamper the government's efforts to hire qualified attorneys; the latter may fear that government service will transform them into legal 'Typhoid Marys,' [footnote omitted] shunned by prospective employers because hiring them may

> result in the disqualification of an entire firm in a possibly wide range of cases.

Id. at 443. *See also Central Milk Producers Cooperative v. Sentry Food Stores, Inc.*, 573 F.2d 988, 991 (8th Cir. 1978); *Kesselhaut v. United States*, 555 F.2d 791, 793 (Ct. Cl. 1977) (per curiam); Comment, *Disqualification of Counsel: Adverse Interests and Revolving Doors*, 81 Colum. L. Rev. 199 (1981); Comment, *The Future of the Chinese Wall Defense to Vicarious Disqualification of a Former Government Attorney's Law Firm*, 38 Wash. & Lee L. Rev. 151 (1981).

The legal services bar, like that of government service, is a significant sector of the legal profession, involving thousands of attorneys. For example, the Legal Services Corporation, established by Congress in 1974, funded programs (such as LSEP) staffed with nearly five thousand attorneys as of the end of the fiscal year 1983. For fiscal year 1984, the Legal Services Corporation operated with a budget of over two hundred eighty million dollars. Legal Services Corporation 1984 Fact Book, at 1-2. Every state and virtually every city has a public interest law organization or bar association actively involved in *pro bono* work. The number of attorneys in the private practice of law who may from time to time volunteer their services to the public interest is impossible to calculate but is clearly substantial.

Legal services attorneys frequently follow a career path like that of government attorneys, often going into private practice after a period of public service to the disadvantaged. While in public service, legal services attorneys, like their counterparts in government service, often develop expertise in particular areas of law. Furthermore, like government attorneys, legal services attorneys frequently work on broad, "issue oriented" matters, which have significance to numerous parties, affect the administration of various statutory schemes, and have broad impact on segments of the economy. So too, private law firms, many times responding to the call of local bar associations, volunteer their attorneys for *pro bono* work under the auspices

of legal services organizations.[7] New associates with law firms commonly request such license when beginning their employment.

The consequences which would flow from disqualifications of government attorneys are the same with regard to legal services attorneys. Lawyers, law firms and clients, when faced with uncertainty as to the efficacy of screening, will seek to avoid the risk by disassociating themselves from those who create the risk. Lawyers or law firms with numerous clients and ongoing matters will surely be reluctant to do *pro bono* work for legal services organizations when, if the Second Circuit's rigid disqualification test set out in this case is used, disqualification of entire law firms could result from the mere employment of attorneys who previously worked for public interest agencies maintaining positions in matters adverse to the firms' clients despite all best efforts to insulate the affected attorneys from the matters at issue. Such circumstances will have a significant effect on legal services organizations, on clients who may be separated from counsel of their choice, and on the mobility of untold thousands of attorneys and law students choosing how and where to begin their legal careers.[8]

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[7] Indeed, in this case, Cheng's brief to the Court of Appeals for the Second Circuit regarding the denial of his first disqualification motion was written with the assistance of an attorney then on leave from a large, prestigious New York City law firm to work with LSEP for several months.

[8] The issue of screening affects, of course, the ever increasing number of attorneys going from one law firm to another. Much interest in this problem has evolved within the legal profession. *See, e.g.*, Lindgren, *Toward a New Standard of Attorney Disqualification*, 1982 Am. B. Found. Research J. 419; Peterson, *Rebuttable Presumptions and Intra-Firm Screening: The New Seventh Circuit Approach to Vicarious Disqualification of Litigation Counsel*, 59 Notre Dame L. Rev. 399 (1984); Adler, *Beyond Chinese Walls: Coping with Conflicts*, The American Lawyer, May 1984, at 6, col. 1.

II.

The Decision of the Court of Appeals Deviates from the Considerations Expressed by This Court in *Firestone Tire & Rubber Co. v. Risjord.*

In *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368 (1981), this Court held that a district court's order denying a motion to disqualify counsel was not appealable prior to final judgment. The underpinning of the *Firestone* decision was that, contrary to the petitioner's assertions therein that denying it immediate review would cause it irreparable harm, the petitioner failed to supply a "single concrete example" of the indelible stamp or taint of which it warned. *Id.* at 376. *Firestone* noted that "[t]he propriety of the district court's denial will often be difficult to assess until its impact on the underlying litigation may be evaluated, which is *normally only after final judgment.*" *Id.* at 377 (emphasis added).

The Court of Appeals for the Second Circuit improperly granted disqualification of the Epstein Firm in advance of trial notwithstanding the District Court's unchallenged finding of fact that respondent Cheng's counsel conceded that he knew of no actual prejudice resulting from Gassel's change of employment. While the *Firestone* decision spoke to the issue of appealability, the viewpoint was expressed that the courts should focus on the existence of actual, not speculative, injury or prejudice in attorney disqualification matters. *See* 449 U.S. at 378-79 n. 13. Yet, the Court of Appeals, relying heavily on its own pre-*Firestone* opinion in this case, 631 F.2d 1052 (2d Cir. 1980), has steadfastly refused to accept the teachings of this Court and continues to stress only the possibility of inadvertent disclosure of information. This position, reiterated in the Second Circuit's decision reversing the award of expenses to the Epstein Firm, 713 F.2d 886 (2d Cir. 1983), unduly influenced the District Court to reverse its prior decisions and reluctantly order disqualification.

III.

The Decision of the Court of Appeals Ignores Less Drastic Alternatives to Vicarious Disqualification.

The Epstein Firm argued to the Court of Appeals that it would consent to a detailed court order, with provisions for monitoring and sanctions, which would preserve the ethical standards of the profession and the public's perception thereof, and at the same time avoid the hardship of separating GAF from counsel of its choice. Such an order was entered in *NFC, Inc. v. General Nutrition, Inc.*, 562 F. Supp. 332 (D. Mass. 1983). In *NFC*, the court believed that the order would actually serve to enhance the public's confidence in the manner in which the legal profession attends to its ethical codes.

The Court of Appeals has manifestly ignored the rationale of *NFC* and appears to have rejected the principle consistently articulated by the Seventh Circuit to the effect that disqualification is a drastic measure which courts should "hesitate to impose except when absolutely necessary." *See Freeman v. Chicago Musical Instrument Co.*, 689 F.2d 715, 721 (7th Cir. 1982). *See also Panduit Corp. v. All States Plastic Mfg. Co.*, 744 F.2d 1564, 1577 (Fed. Cir. 1984).

CONCLUSION

For the above reasons, a writ of certiorari should issue to review the judgment and decision of the United States Court of Appeals for the Second Circuit in this case.

Respectfully submitted,

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January, 1985

APPENDIX

APPENDIX A
Opinion of the Court of Appeals
for the Second Circuit

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 16 — August Term, 1984

(Argued: September 21, 1984 Decided: October 25, 1984)

Docket No. 84-7246

JAMES K. J. CHENG,

Plaintiff-Appellee,

—against—

GAF CORPORATION,

Defendant-Appellant.

Before:

OAKES, WINTER, and PRATT, *Circuit Judges.*

Appeal from an order of the United States District Court for the Southern District of New York, Owen, *J.*, granting plaintiff's motion to disqualify defendant's counsel.

Affirmed.

STUART M. GERSON, New York, NY (Epstein, Becker, Borsody & Green, New York, NY, of counsel), *for Defendant-Appellant.*

JONATHAN A. WEISS, New York, NY (Legal Services for the Elderly Poor, New York, NY, of counsel), *for Plaintiff-Appellee.*

Per Curiam:

Defendant GAF appeals from an order of the United States District Court for the Southern District of New York, Owen, *Judge*, granting plaintiff Cheng's motion to disqualify GAF's counsel, Epstein, Becker, Borsody & Green, P.C. (the Epstein firm). We affirm.

Cheng began this employment discrimination suit against GAF in 1977. While the case was in the discovery stage, the Epstein firm hired as an associate, Philip Gassel, an attorney who had been employed by Legal Services for the Elderly Poor, the organization representing Cheng. Thereupon Cheng moved to disqualify the Epstein firm from representing GAF, contending that the firm's continued participation in the action violated the ABA Code of Professional Responsibility.

Concluding that disqualification "would not serve any interest which the law recognizes" the district court denied this motion. On appeal we reviewed the circumstances and contentions in considerable detail and concluded:

> Thus, it is clear that under Canon 9 as well as Canons 4 and 5, Gassel and the Epstein firm must be disqualified. Judge Owen's decision to the contrary was an abuse of discretion. Moreover, if there were any doubt as to the propriety of our action, we would resolve it in favor of disqualification.

Cheng v. *GAF Corp.*, 631 F.2d 1052, 1059 (2d Cir. 1980) (Cheng I).

We therefore reversed and remanded to the district court for entry of an order of disqualification. *Id.* The Supreme Court summarily vacated our judgment, *GAF Corp.* v. *Cheng*, 450 U.S. 903 (1981), and instructed us to dismiss Cheng's appeal on jurisdictional grounds, based on its intervening decision in *Firestone Tire & Rubber Co.* v. *Risjord*, 449 U.S. 368 (1981), which held that orders denying motions to disqualify counsel in civil cases are unappealable interlocutory orders. Cheng then moved before us to treat the original appeal as a petition for a writ of mandamus. We denied this motion and dismissed the appeal. *Cheng* v. *GAF Corp.*, 659 F.2d 1058 (2d Cir. 1981) (mem.)

When Cheng later renewed his disqualification motion, the district court denied it without prejudice to still later renewal should circumstances warrant it. After the Supreme Court denied Cheng's petition to review our denial of his request for mandamus, GAF moved in the district court for attorney's fees, expenses, and costs incurred in defending against Cheng's efforts to disqualify GAF's counsel after May 12, 1981, the date on which Cheng had renewed his original disqualification motion in the district court. Finding that Cheng's later disqualification efforts were unreasonable, the district court, pursuant to 28 U.S.C. § 1927, awarded GAF $1,000 in attorney's fees, expenses, and costs. *Cheng* v. *GAF Corp.*, 566 F. Supp. 350 (S.D.N.Y. 1982).

Again we reversed, *Cheng* v. *GAF Corp.*, 713 F.2d 886 (2d Cir. 1983) (Cheng II), concluding that our prior

decision "was itself enough to justify appellant's efforts." *Id.* at 891. In that opinion we observed that:

> Thus, although the district court was not bound by our previous decision, we find it puzzling that he chose to ignore the reasoning of that decision and again denied appellant's motion to disqualify. More significantly, we find it extraordinary that he should penalize appellant's lawyer for attempting to have this court review that denial, given that this court had already ruled in appellant's favor in its earlier opinion.

Id.

Thereafter, Cheng moved for a third time to disqualify the Epstein firm, and this time the district court granted the motion. GAF now appeals, contending that the district court abused its discretion. In light of the prior history of this case, particularly our decisions in *Cheng I* and *Cheng II*, which criticized the district court's view that the Epstein firm should not be disqualified, it is clear that the district court did not abuse its discretion by finally granting the disqualification motion. The order appealed from is therefore affirmed.

APPENDIX B

Opinion of the District Court for the Southern District of New York

MEMORANDUM

Cheng v. GAF, 77 Civ. 3159 (RO)

While aware that the Court of Appeals denied the mandamus plaintiff sought following the denial of the prior motion; and aware of the instruction of *Firestone v. Risjord*, 449 U.S. 368 cited by the Supreme Court on the first certiorari herein, at 377: "The propriety of the District Court's denial of a disqualification motion will often be difficult to assess until its impact on the underlying litigation may be evaluated, which is normally after final judgment. . ."; and aware of today's great and increasing amount of lateral transfers of lawyers among firms (*see e.g.*, *"The Rush to Lateral Hires,"* The National Law Journal, October 31, 1983); and while aware of plaintiff's counsel's concession on the record on the argument of the motion that he knows of no actual prejudice from Mr. Gassel's transfer, and that his claim is that, "The actual injury was created by the transfer[,]" the motion is nevertheless granted, *see*, 713 F.2d 886 (1983.) This action should proceed to its conclusion unburdened of this overhanging issue.

So ordered.

2/13/84

/s/ Richard Owen

United States District Judge

APPENDIX C

Judgment of the Court of Appeals for the Second Circuit

UNITED STATES COURT OF APPEALS
For The
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-five day of October one thousand nine hundred and eighty-four.

Present: HON. JAMES L. OAKES
HON. RALPH K. WINTER
HON. GEORGE PRATT
Circuit Judges,

JAMES K.J. CHENG

Plaintiff-Appellee,

— against —

84-7246

GAF CORPORATION,

Defendant-Appellant.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the order of said District Court be and it hereby is affirmed in accordance with the opinion of this court with costs to be taxed against the appellant.

Elaine B. Goldsmith,
Clerk

By: Edward J. Guardaro,
Deputy Clerk

UNITED STATES COURT OF APPEALS
Filed Oct. 25, 1984
Elaine B. Goldsmith, Clerk Second Circuit

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